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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,793	12/01/2003	Nicolas Voute	2035.009A	1907

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EXAMINER

JIANG, CHEN WEN

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/724,793	VOUTE ET AL.	
	Examiner	Art Unit	
	Chen-Wen Jiang	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/1, 2/5, 4/6, 6/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. An examination of this application reveals that it includes terminology which is so different from that which is generally accepted in the art to which this invention pertains that a proper understand/search of the prior art difficult to made. For example: the terminologies used in the claims (e.g.; support member, support structure, handle, channel, cart, post, aperture, frame top, capture member, etc.) have not been used in specification.

Applicant is required to provide a clarification of these matters or correlation with consistent terminology so that a proper comparison with the prior art can be made. Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

Information Disclosure Statement

2. The information disclosure statement filed 12/1/2004 associated with 10/254,036 does not supply non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. These non-patent literatures will be considered in the next Office Action since the parent case file (10/254,036) has not been received before the completion of this Office Action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 20-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. "Aperture", "post" and "aperture is adapted to receive said at least one post" has not been disclosed in the specification.

5. Claims 10-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. "A support member", "a support structure" and "handle" have not been disclosed in the specification.

6. Claims 11,19 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. "A transportation cart" and "rails of a walk-in freezer" have not been disclosed in the specification.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 10-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claims 10-32 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: The relationship among “container connectable to a support member”, “a support member”, “a heat transfer surface” and “a support structure” is not clearly defined in the specification.

10. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: The relationship between “support member” and “capture member” is not defined in the specification.

11. The following rejections are based on the best understanding of the claimed limitations.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 10,12,13,14,15,16,17,18,20,21,22,23,24,25,26,27,29,30,31 and 32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Faust et al. (U.S. Patent Number 4,090,374).

Faust et al. disclose an apparatus comprising pouches/bags 47 (container) with handle (Fig.3), handle 45, support member 29, support structure 15 in the temperature control unit 11 and heat transfer between cryogenic medium and fluid in the pouches. Pouch has port since it is filled with fluid. Plate 31 is hinge connected to a second plate 37 with hinge pins 39 fitted through the first plate hinge bosses 35 and companion hinge bosses 41 on second plate 37. Support structure 15 comprises a circular flat base 17 to which is perpendicularly centrally attached an upright plate retainer 19 cut or cast from flat stock to define slots (channels) 21 disposed to hold the bags and restraining plates. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *Ir re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

14. Claims 10-32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bender (U.S. Patent Number 3,586,097).

Bender discloses an apparatus comprising bag container 24, support member 21, channels 17,18,19, support structure 26/40, handle 28, refrigeration coil 41, temperature control unit 10 on

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wheel 12 and heat transfer surface 21. Pouch has port 23 since it is filled with fluid. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *Ir re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

15. Claims 18,23,24 and 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Moser et al. (U.S. Patent Number 5,616,301).

Moser et al. disclose a thermal cyclor. Referring to Figs.1 and 4, the system comprises container 21, ring 23, Peltier element 36, heat transfer surfaces 37,38, recess 27 and casing 34.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 11,19 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faust et al. (U.S. Patent Number 4,090,374) in view of Tumpach (EP 1,134,000) or Ammann et al. (U.S. Patent Number 6,605,213).

Faust et al. disclose the invention substantially as claimed. However, Faust et al. do not disclose using in a cart. Tumpach and Ammann et al. disclose using in a cart in the same field of

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endeavor for the purpose of transportation. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Faust et al. with a cart in view of Tumpach and Ammann et al. so as to transport the material.

Double Patenting

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 18-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-13 and 24 of U.S. Patent No. 6,065,294. Although the conflicting claims are not identical, they are not patentably distinct from each other because '213 claim container, temperature control unit comprising first surface, second surface, heat transfer surface and heat exchanger.

20. Claims 10-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-13 and 24 of U.S. Patent No. 6,698,213 in view of Hammerstedt et al. (U.S. Patent Number 6,065,294). Although the conflicting claims are not identical, they are not patentably distinct from each other because '213 claim container,

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temperature control unit comprising first surface, second surface, heat transfer surface and heat exchanger. Hammerstedt et al. disclose a handle on the container.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (571) 272-4809.

The examiner can normally be reached on Tuesday-Friday from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on (571) 272-4808. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang
Primary Examiner

